

Remarks

Reconsideration of the application and allowance of all pending claims are respectfully requested. Claims 1-9, 11-12 and 19-21 remain pending.

In the Office Action dated December 23, 2008, claims 1-3, 7-9, 11-12 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenny et al. (U.S. Patent Publication No. 2002/0060868) in view of Gray et al. (U.S. Patent No. 6,249,887); claims 4, 5 and 6 are rejected as being unpatentable over Lenny in view of Gray and further in view of Official Notice. Applicants respectfully, but most strenuously, traverse these rejections for the reasons herein.

In one aspect, applicants' invention is directed to automatically obtaining product usage information for a plurality of products and automatically forwarding data relating to the collected information to one or more interested entities. The product usage information is obtained by actual usage of the products in a real-time, non-test environment. By collecting this information and forwarding it to the interested entities, changes can be made to one or more of the products based on the information. In one embodiment, these changes are automatically made based on the automatically received information.

In one particular aspect of applicants' invention, applicants recite a method of facilitating provision of product usage information to interested entities (e.g., independent claim 1). The method includes, for instance, automatically obtaining, by a processor, product usage information generated by a plurality of products, used in real-time, non-test environments, wherein at least one product of the plurality of products is local to one product user and at least one product of the plurality of products is global to the one product user, and wherein the plurality of products include autonomic logic and wherein the automatically obtaining is independent of product user input; analyzing by the processor the obtained product usage information generated from the plurality of products to obtain an analysis; and automatically providing a summary of the analysis to at least one interested entity to determine whether a change is to be made to the plurality of products or future products.

Thus, in this aspect of applicants' claimed invention, information is obtained regarding a plurality of products including local and global products. That is, information is collected regarding a product that is local to one product user and a product that is global to that product user. The information that is collected for the plurality of products is analyzed. A summary of the analysis, which includes data from the local and global products, is automatically provided to an interested entity to determine whether a change is to be made. This is not described, taught or suggested in Lenny or Gray, either alone or in combination.

Lenny describes a critical event log for a disc drive. The data collected in Lenny is data for a particular disc drive. There is no description, teaching or suggestion of collecting data for a plurality of products, and in particular, for a plurality of products in which one of the products is local to a given product user and one of the products is global to that product user. There is no description in Lenny of obtaining information generated by a plurality of products, and analyzing the information **generated from the plurality of products** to obtain **an analysis** (emphasis provided). Instead, in Lenny, information is obtained from individual disc drives and separate analyses of individual disc drives are performed. An analysis in Lenny is not of information generated from a plurality of products, as claimed by applicants, but of a single product. Since this is missing from Lenny, Lenny fails to describe, teach or suggest at least this aspect of applicants' claimed invention.

Further, it is explicitly admitted in the Final Office Action that Lenny fails to describe at least one product of the plurality of products is global to the one product user and fails to describe automatically providing data relating to the product usage information to at least one interested entity. Thus, Gray is relied upon. However, Gray does not overcome the deficiencies of Lenny.

Gray describes a technique for predicting failure of a disk drive, and like Lenny, Gray is focused on one particular product. There is no discussion in Gray of obtaining data from a plurality of products, i.e., a product that is local to one product user and product that is global to that product user, analyzing the data from the plurality of products (local and global) and providing a summary of that analysis to an interested entity. While in Gray data is forwarded to an interested entity, it is data for one product. There is no description, teaching or

suggestion of analyzing data from a plurality of products, both local and global, and providing a summary of that analysis of the plurality of products to the interested entity, as claimed by applicants. Since this is not taught or suggested in Gray, Gray does not overcome the deficiencies of Lenny.

Both Lenny and Gray fail to describe, teach or suggest at least applicants' claimed feature of obtaining data regarding a product that is local to one product user and a product that is global to that product user, analyzing data from those local and global products and providing a summary of that analysis to an interested entity. Since both references fail to describe, teach or suggest at least this aspect of applicants' claimed invention, the combination also fails to describe, teach or suggest this feature. Thus, applicants respectfully request an indication of allowability for independent claim 1.

Additionally, independent claim 19 is patentable for the same reasons as independent claim 1, as well as its own additional features. Moreover, the dependent claims are patentable for the same reasons as the independent claims, as well as for their own additional features. For example, dependent claim 4 recites using the summary of the analysis to effect one or more changes of one or more products of the plurality of products, wherein the using comprises using the summary to regroup a number of the products. Neither Lenny nor Gray describes the regrouping of products based on an analysis performed on a plurality of products including those that are local and global.

Further, dependent claim 5 further recites that the regrouping further includes using a grouping criterion, as well as the summary, to regroup the number of products. Again, this is not described, taught or suggested in Lenny or Gray, either alone or in combination. Yet further, dependent claim 6 specifically recites that the regrouping further comprises prioritizing the number of products and using the priority of the number of products, the regrouping criterion and the summary to regroup the number of products. Again, there is no discussion in Lenny or Gray of regrouping of products or prioritizing products based on a grouping criterion and the summary, as claimed by applicants.

The failure of Lenny and Gray to teach these aspects of applicants' claimed invention, as recited in dependent claims 4-6, is explicitly admitted in the Final Office Action; however,

the Examiner takes Official Notice that it is old and well known in the regroup and classification art to create a sub-group based on data previously provided.

Applicants respectfully traverse the taking of Official Notice that it is old and well-known to use a summary of analysis of a plurality of products, local and global, to regroup a number of products; to regroup based on that summary and a grouping criterion; and/or to regroup, in which the regrouping includes prioritizing the number of products, using the priority, grouping criterion and summary to regroup. Applicants respectfully submit that these elements for which Official Notice is taken are not common knowledge or well-known in the art. Applicants respectfully submit that Official Notice, unsupported by documentary evidence, should only be taken where the facts asserted to be well known or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known (MPEP 2144.03; In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). As stated in the MPEP, "It would not be appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." Further, "It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." (MPEP 2144.03; Zurko, 258 F.3d at 1385, 59 USPQ2s at 1697). It is further stated that if such Official Notice is taken that the basis for such reasoning must be set forth explicitly. That is, the Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his conclusion of common knowledge.

Applicants respectfully submit that the facts asserted herein to be well-known are not capable of instant and unquestionable demonstration as being well-known. Instead, applicants believe that the regrouping and prioritizing, as claimed, are part of their invention. Thus, applicants respectfully request that the Examiner produce authority for his statements.

In addition to the above, MPEP 2144.03 clearly states that the applying of Official Notice should be rare when an application is under final rejection, as in this instance. Therefore, applicants respectfully request, at the very least, that the finality of the rejection be removed, and if the rejection is to be maintained, that proper authority be provided.

Based on the foregoing, applicants respectfully traverse the taking of Official Notice and request that the Examiner provide evidentiary documentation of the Official Notice. In addition, applicants respectfully request that the finality of the Office Action be withdrawn due to the improper taking of Official Notice.

Yet further, applicants respectfully submit that a *prima facie* case of obviousness has not been established for dependent claims 4-6, and moreover, *assuming arguendo*, a *prima facie* case of obviousness has been provided, applicants respectfully submit that the combination, including the Official Notice, is impermissible hindsight reconstruction of applicants' invention.

Applicants respectfully submit: "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985) (MPEP §706.02(j)).

It is explicitly admitted in the Final Office Action that the references do not teach what is being claimed, and applicants respectfully submit that a convincing line of reasoning as to the use of Official Notice has not been provided. Applicants respectfully submit that it is insufficient to merely state that regrouping and prioritizing are known. Even if regrouping and prioritizing in general are known, it is not a teaching of regrouping and prioritizing, as specifically claimed by applicants. There is no teaching or suggestion in the references or with respect to the Official Notice of using a summary of an analysis of product usage information generated from a plurality of products to regroup a number of the products or prioritize the products, as claimed by applicants. Applicants respectfully submit that the conclusions of the Examiner are based on impermissible hindsight reconstruction of applicants' invention.

Based on the foregoing, applicants respectfully submit that the final Office Action fails to state a *prima facie* case of obviousness against the claims presented. Again, to the extent that the Examiner is relying on alleged knowledge of one of ordinary skill in the art,

applicants request that the Examiner more specifically document the alleged knowledge of one of ordinary skill in the art if relevant to the combining of the references and the hindsight modification thereof. This request is made pursuant to 37 C.F.R. §1.104(d)(2).

For at least the above reasons, applicants respectfully request an indication of allowability for all pending claims.

Should the Examiner wish to discuss this case with applicants' attorney, please contact applicants' attorney at the below listed number.

Respectfully submitted,



Blanche E. Schiller
Attorney for Applicants
Registration No.: 35,670

Dated: February 20, 2009

HESLIN ROTHENBERG FARLEY & MESITI P.C.
5 Columbia Circle
Albany, New York 12203-5160
Telephone: (518) 452-5600
Facsimile: (518) 452-5579